

Richard A. Huver, Esq. (Bar No. 132945)
THE HUVER LAW FIRM
655 West Broadway, Suite 1400
San Diego, California 92101
619.961.4883
619.961.4886 Fax
rhuver@huverlaw.com

George L. de la Flor, Esq. (112488)
LAW OFFICES OF GEORGE L. DE LA FLOR, APLC
8355 La Mesa Boulevard
La Mesa, CA 91942
Telephone: 619-698-2926
Facsimile: 619-698-7540
Gldelaflor@cs.com

Attorneys for Plaintiff PAMELLA CIBERAY

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

PAMELLA CIBERAY,

Plaintiff,

vs.

L-3 COMMUNICATIONS CORPORATION
MASTER LIFE AND ACCIDENTAL
DEATH AND DISMEMBERMENT
INSURANCE PLANS; CHARTIS; and
UNITED STATES LIFE INSURANCE
COMPANY IN THE CITY OF NEW YORK,
AN INDIRECT WHOLLY OWNED
SUBSIDIARY OF AMERICAN
INTERNATIONAL GROUP INC.,

Defendants.

CASE NO. 12cv1218-AJB-MDD

**FIRST AMENDED COMPLAINT FOR
BREACH OF CONTRACT FOR
FAILURE TO PAY LIFE INSURANCE
BENEFITS and BREACH OF
FIDUCIARY DUTY**

GENERAL ALLEGATIONS

1. Plaintiff PAMELLA CIBERAY ("Plaintiff" or "Ciberay") brings this action against Defendants L-3 COMMUNICATIONS CORPORATION MASTER LIFE AND ACCIDENTAL DEATH AND DISMEMBERMENT INSURANCE PLANS ("Plan"), CHARTIS, and UNITED STATES LIFE INSURANCE COMPANY IN THE CITY OF NEW YORK, AN INDIRECT

1 WHOLLY OWNED SUBSIDIARY OF AMERICAN INTERNATIONAL GROUP INC. ("United
2 States Life"). The Plan is an employee welfare benefit plan as defined by the Employee
3 Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 et. seq., and the benefits sought
4 and referred to in this action under the Plan are subject to ERISA.

5 2. At all times material herein, decedent RICHARD P. CIBERAY and Plaintiff
6 PAMELLA CIBERAY were residents of Escondido, California.

7 3. Plaintiff is informed, believes, and thereon alleges, that Defendants CHARTIS,
8 UNITED STATES LIFE, and L-3 COMMUNICATIONS CORPORATION are, and at all
9 relevant times were, New York corporations authorized to transact and transacting business in the
10 State of California, including the County of San Diego in the Southern District.

11 4. Plaintiff is informed, believes, and thereon alleges, that Defendant CHARTIS is,
12 and at all relevant times was, a segment or division of AMERICAN INTERNATIONAL LIFE
13 ASSURANCE COMPANY OF NEW YORK ("American International"), which, after the
14 submission of the claim herein, merged with defendant UNITED STATES LIFE.

15 5. Plaintiff is informed, believes, and thereon alleges, that at all relevant times herein,
16 CHARTIS was expressly acting on behalf of AMERICAN INTERNATIONAL, inasmuch as it
17 identified itself as "CHARTIS On behalf of: American International Life Assurance Company of
18 New York" on its letterhead in correspondence with Plaintiff. Plaintiff is informed, believes, and
19 thereon alleges, that UNITED STATES LIFE is the successor corporation for AMERICAN
20 INTERNATIONAL, and has assumed, contractually, legally or otherwise, any and all liabilities of
21 AMERICAN INTERNATIONAL, including but not limited to, those set forth hereafter.

22 6. CHARTIS, AMERICAN INTERNATIONAL and UNITED STATES LIFE are
23 collectively referred to hereinafter as "Chartis."

24 7. The "Summary Plan Description" provided to Mr. Ciberay by the Plan provides in
25 pertinent part, "L-3 Communications Corporation, as Plan Administrator, is responsible for the
26 administration of the Plan...The Plan Administrator has full and complete discretionary authority
27 and responsibility to administer the Plan and may delegate any or all of its authority and
28 responsibility to any individuals or entities by action of its Board of Directors...The Plan

1 Administrator has delegated to the insurance company the full and complete discretionary
2 authority to decide all questions of eligibility for benefits under the Plan. The insurance
3 company's decisions are final and binding on all parties to the full extent permitted by the law."

4 8. Pursuant to the above-referenced language contained within the Summary Plan
5 Description, Chartis served as an Administrator for the Plan. Additionally, Chartis has identified
6 itself as a de facto Plan Administrator by virtue of its services to and communications with
7 Plaintiff, its denial of Plaintiff's claim for benefits, its handling of Plaintiff's appeal of such denial,
8 and by providing its alleged justifications for such denial.

9 9. Plaintiff is informed, believes, and thereon alleges, that at all times relevant herein,
10 the conduct of Defendants were carried out through the acts and omissions of their officers, agents
11 and employees, and the conduct of said officers, agents and employees was authorized and ratified
12 by Defendants.

13 10. Plaintiff is informed, believes, and thereon alleges, that at all times relevant herein,
14 each Defendant was acting as an agent, employer, or alter ego for each of the other Defendants,
15 and was acting within the scope of said agency or other relationship with the knowledge and
16 consent of each of the other Defendants.

17 11. Plaintiff brings this action to secure all benefits to which Plaintiff is entitled under
18 an accidental death and dismemberment insurance policy underwritten and administered by
19 defendant Chartis. Plaintiff's deceased husband was covered under the policy by virtue of his
20 employment with L-3 Communications Corporation, and the Plan it provided as a benefit of such
21 employment.

22 JURISDICTION AND VENUE

23 12. This action is brought pursuant to a Plan that constitutes an employee welfare
24 benefit plan under ERISA, 29 U.S.C. §§ 1101 et. seq. This Court has jurisdiction to hear this
25 matter pursuant to 28 U.S.C. § 1331.

26 13. Venue is proper within the Southern District of California pursuant to 28 U.S.C. §
27 1391 and 29 U.S.C. § 1132(e)(2) because the acts and transactions giving rise to this action
28 occurred within the District, and Defendants may be found within the District.

1 14. Each of the Defendants at all times relevant herein conducted business in the
2 Southern District of California, and violated United States and California law in the District.
3 Defendants, and each of them, have sufficient minimum contacts with California and the District.
4 Defendants intentionally availed themselves of the laws of California by advertising to,
5 conducting business with, and entering into and administering insurance contracts and claims with
6 California and District residents. Further, Defendants, and each of them, purposefully placed
7 themselves in a fiduciary capacity with, and received contributions from, California and District
8 residents.

9 **PARTIES AND FIDUCIARY RELATIONSHIPS**

10 15. Decedent Richard Ciberay was, at all times relevant hereto, an employee of
11 Defendant L-3 Communications, and so remained until his death on February 16, 2010. As such,
12 he was covered by and a participant of the Plan, and entitled to receive, and/or to designate a
13 beneficiary to receive, benefits under ERISA.

14 16. Defendants United States Life and/or Chartis issued a Group Accident Insurance
15 Policy to Richard Ciberay (Policy No. PAI 8059148) ("Policy"), pursuant to the Plan. The Policy
16 was obtained by Mr. Ciberay by virtue of his employment with Defendant L-3 Communications.
17 The Policy was in full force and effect at all times relevant herein.

18 17. Said Policy provided benefits to the designated beneficiary in a principal sum based
19 on the policyholder's salary. On the operative date of February 16, 2010, \$620,000 in benefits was
20 payable to Plaintiff under the Plan Policy in the event of Mr. Ciberay's accidental death.

21 18. Plaintiff Pamella Ciberay is Richard Ciberay's surviving spouse, and the sole
22 beneficiary named by Mr. Ciberay to receive the benefits due under the policy.

23 19. Under the terms of the Plan and L-3 Communications' exercise of its authority to
24 delegate responsibility for the administration of the Plan, as set forth above, Chartis was the group
25 insurance provider, as well as the Administrator who administered claims under the Plan Policy
26 and retained the sole authority to grant or deny benefits to applicants.

27 20. Each Defendant is either a Plan and/or fiduciary within the meaning of 29 U.S.C. §§
28 1001 and 1002. Said Defendants are fiduciaries within the meaning of ERISA, and have a

1 fiduciary obligation to administer the Plan fairly and to furnish insurance benefits according to the
2 terms of the Plan.

3 **STANDARD OF REVIEW**

4 21. Chartis funded the Plan Policy benefits, as well as determining eligibility to receive
5 benefits under the Plan Policy.

6 22. Because Chartis both funded the Plan benefits and retained the sole authority to
7 grant or deny benefits, Chartis had an inherent conflict of interest.

8 23. Chartis engaged in procedural irregularities in denying the claim, including but not
9 limited to, basing its denial of benefits on a Policy exclusion clause that is void and unenforceable
10 under 29 U.S.C. § 1144(b)(2)(A), California Insurance Code §§ 10369.1-10369.12, and other
11 controlling law.

12 24. These procedural errors and irregularities, combined with the conflict of interest
13 described above, establish that Chartis's decision to deny accidental death benefits should be
14 reviewed by this Court under a de novo standard of review, rather than an "arbitrary and
15 capricious" standard. However, in the alternative, should the Court find that the latter standard is
16 applicable, the "less deferential" standard is invoked as a result of the aforementioned conflict of
17 interest and procedural irregularities. Moreover, even if the Court should determine that the most
18 deferential "arbitrary and capricious" standard applies, the applicable law and evidence of record,
19 particularly Chartis's reliance on an unlawful Policy exclusion to deny benefits, demonstrate that
20 its decision to deny benefits was not reasonable, was inconsistent with the goals and language of
21 the Plan and Plan Policy, was arbitrary and capricious, and amounts to a flagrant abuse of
22 discretion.

23 **FACTUAL BACKGROUND AND ADMINISTRATIVE APPEAL**

24 25. As of the date of his death, Richard Ciberay was a 60 year old man employed by
25 L-3 Communications as a field electronics engineer.

26 26. On or about February 7, 2010, Mr. Ciberay fell down a flight of stairs at his home
27 and suffered a hip fracture. He was transported by ambulance to Palomar Medical Center in
28 Escondido, where he was diagnosed with superior and inferior pubic rami fractures and a pelvic

1 hematoma, plus a head laceration. He was admitted to the hospital, where he received treatment
2 for his injuries.

3 27. On February 16, 2010, while still hospitalized, Mr. Ciberay died. The Death
4 Certificate and Amended External Examination Report prepared by the County of San Diego
5 Office of the Medical Examiner list the cause of death as complications following pelvic
6 fractures, with hypertensive cardiovascular disease, alcohol abuse, obesity, and diabetes mellitus
7 listed as contributing. The manner of death was stated as "Accident."

8 28. Following Mr. Ciberay's death, Plaintiff, as surviving spouse and sole beneficiary
9 under the Policy, made a timely application and claim for accidental death benefits, and performed
10 all conditions required under the Policy for receipt of such benefits.

11 29. By letter dated December 3, 2010, Defendant Chartis notified Plaintiff that it was
12 denying her claim for accidental death benefits under the Policy. It cited portions of the Plan
13 Policy, and relied on an exclusion within the Policy as the basis for its denial, as follows:

14 Accidental Death Benefit. If Injury to the Insured Person results in death within 365
15 days of the date of the accident that caused the Injury, the Company will pay 100%
16 of the Principal Sum.

17 * * *

18 Injury-means bodily injury caused by an accident occurring while this Policy is in
19 force as to the person whose injury is the basis of claim and resulting directly and
20 independently of all other causes in a covered loss.

21 * * *

22 Exclusions:

23
24 This policy does not cover any loss caused in whole or in part by, or resulting in
25 whole or in part from, the following:

26 * * *

27 5. The Insured Person being under the influence of drugs or
28 intoxicants, unless taken under the advice of a Physician.

1 30. In its letter dated December 3, 2010, Chartis stated, "Based on our review of the
2 available records, we determined that your spouse's death was not the direct result of a bodily
3 injury caused by an accident resulting directly and independently of all other causes, but was
4 caused in whole or in part by, or resulted in whole or in part from your spouse being under the
5 influence of intoxicants. Therefore, we must respectfully deny your claim for Accidental Death
6 benefits."

7 31. Other than the above-referenced exclusion, Chartis has not, at any time, stated any
8 other basis for its denial of benefits to Plaintiff.

9 32. On or about February 28, 2011, Plaintiff timely perfected her administrative appeal
10 pursuant to the Policy. Chartis acknowledged receipt of her request to appeal its prior decision in
11 a letter dated March 14, 2011.

12 33. By letter dated April 18, 2011, Chartis notified Plaintiff that the ERISA Appeals
13 Committee of American International had determined that no benefits were payable under the
14 Policy as previously outlined in the letter dated December 3, 2010, again citing the same
15 exclusion set forth above. The letter further stated that "...the Committee's denial of this appeal
16 is a final plan administration decision."

17 34. Plaintiff has now exhausted all Plan claims procedures, and all contractual and
18 administrative remedies available to her. Her claim is ripe for judicial review pursuant to 29
19 U.S.C. § 1132.

20
21 **FIRST CAUSE OF ACTION FOR WRONGFUL DENIAL OF BENEFITS AND**
22 **RECOVERY OF PLAN BENEFITS PURSUANT TO 29 U.S.C. § 1132:**
23 **AGAINST ALL DEFENDANTS**

24 35. Plaintiff refers to and incorporates herein by reference each and every allegation set
25 forth above in paragraphs 1 through 34, inclusive, as though set forth in full herein.

26 36. Under the terms of the Plan and Policy, Defendants agreed to provide Plaintiff with
27 accidental death benefits as follows: "If injury to the Insured Person results in death within 365
28

1 days of the date of the accident that caused the Injury, the Company will pay 100% of the
2 Principal Sum." Defendants failed to provide such benefits.

3 37. While ERISA contain a preemption provision which provides that all state laws are
4 superseded insofar as they relate to employee benefit plans (29 U.S.C. § 1144(a)), this provision is
5 limited by a "savings" clause which saves from preemption "any law of any State which regulates
6 insurance, banking or securities" (29 U.S.C. § 1144(b)(2)(A)). State laws "regulating the
7 substantive content of insurance contracts are laws that regulate insurance and thus are within the
8 scope of the insurance savings clause." *Metropolitan Life Ins. Co. v. Massachusetts* (1985) 471
9 U.S. 724, 741 n.18.

10 38. The Plan's Summary Plan Description provides, "In general, ERISA preempts state
11 law. However, ERISA does not pre-empt state laws that regulate insurance. The Plan will always
12 be construed to comply with applicable federal and state law." Additionally, the Policy provides,
13 "This Policy is governed by the laws of the state in which it is delivered."

14 39. The California Insurance Code contains statutes that regulate the substantive
15 content of insurance contracts, including limitations on the form and content of exclusions that
16 may be contained in an accidental death policy in the State of California, at Sections 10369.1 to
17 10369.12, inclusive.

18 40. California Insurance Code § 10369.12 permits an accidental death policy to include
19 an exclusion for death as a consequence of the insured's intoxication or use of controlled
20 substances in the following form: "The insurer shall not be liable for any loss sustained or
21 contracted in consequence of the insured's being intoxicated or under the influence of any
22 controlled substance unless administered on the advice of a physician."

23 41. Under California Insurance Code § 10369.1, no limitations or exclusions may be
24 included in accidental death policies which are "...less favorable in any respect to the insured or
25 the beneficiary" than the form exclusions provided in §§ 10369.2 through 10369.12. The United
26 States District Court for the Northern District of California has been called upon to interpret this
27 statute as it applies to § 10369.12, and has held, "If the policy provision is less favorable than the
28 statutory provision, then the statutory provision controls." *Smith v. Stonebridge Life Insurance*

1 **Co.** (N. D. Cal. 2008) 582 F. Supp. 2d 1209, 1219. "...when interpreting insurance policy
2 language required by statute, the statute 'must be construed to effect not the intent of the parties,
3 but the intent of the legislature; therefore the rules of statutory construction apply.'" Id at 1220
4 (citations omitted).

5 42. California Insurance Code § 10369.12 has been interpreted by California's higher
6 Courts as requiring insurers to prove that intoxication was the efficient proximate (meaning
7 predominate) cause of the loss in order to apply the permitted exclusion to deny benefits otherwise
8 payable under an accidental death policy. Thus, for the exclusion to be lawfully applied, "...the
9 Insurance Code requires death to be 'in consequence of' being intoxicated and not just a
10 contributing factor." *Olson v. American Bankers Insurance Company of Florida* (2009) 30 Cal.
11 App. 4th 816, 830-831.

12 43. The Policy exclusion relied upon by Chartis as the basis for denying Plaintiff's
13 claim is both inconsistent with, and less favorable to the insured and beneficiary than, the form
14 exclusion set forth in California Insurance Code § 10369.12, in that Chartis' exclusion allows for
15 the denial of benefits where death was "caused in whole or in part by, or resulting in whole or in
16 part from...the insured person being under the influence of drugs or intoxicants," rather than
17 requiring proof that the insured's death was in consequence of being intoxicated, with intoxication
18 the predominating proximate cause of death and not just a contributing factor.

19 44. In a paragraph entitled, "Conformity With State Statutes, the Policy provides, "Any
20 provision of this Policy which, on its effective date, is in conflict with the statutes of the state in
21 which this Policy is delivered is hereby amended to conform to the minimum requirement of those
22 statutes."

23 45. In accordance with the controlling law and the Policy's own provisions as cited
24 above, Defendants' denial of Plaintiff's claim for accidental death benefits under the policy's
25 exclusion for "any loss caused in whole or in part by, or resulting in whole or in part from...the
26 Insured Person being under the influence of drugs or intoxicants" violates California Insurance
27 Code § 10369.12. The Policy's exclusion on which Chartis relied as its sole basis for denying the
28 Plaintiff's claim, is void, unlawful, and unenforceable under non-preempted California law

1 regulating the substantive content of insurance contracts with respect to precisely the type of
2 exclusionary clause relied on by Chartis.

3 46. Defendants have wrongfully denied life insurance benefits to Plaintiff in violation
4 of Plan provisions and ERISA, in spite of acknowledging that Plaintiff is the surviving spouse and
5 sole beneficiary entitled to recover life insurance benefits under the Policy, and despite receiving
6 records indicating that Mr. Ciberay died as a result of complications of a pelvic fracture following
7 an accidental fall. Defendants invoked an unlawful and unenforceable exclusion to deny Plaintiff
8 recovery of the insurance benefits to which she is entitled under the Policy in violation of its legal
9 obligation to instead apply the statutory exclusion set forth in California Insurance Code §
10 10369.12, in accordance with non-preempted California law, applicable federal law, and its own
11 Policy provisions requiring conformity with state statutes, as quoted above.

12 47. Defendants further failed to afford proper weight to the evidence in the
13 administrative record showing that Plaintiff is entitled to receive such benefits. Defendants have
14 violated their contractual obligation to furnish insurance benefits to Plaintiff, and denial of
15 Plaintiff's claim on the basis stated by Chartis constitutes a breach of the Plan and the Plan Policy.

16 48. Defendants' acts and omissions as set forth herein, including but not limited to their
17 reliance on a void and unenforceable exclusion as a basis for denying Plaintiff's claim, amount to
18 an unreasonable, arbitrary, and capricious breach of their obligations as set forth in the Plan and
19 Policy.

20 49. As a direct and proximate result of the aforementioned conduct of Defendants in
21 failing to provide coverage and pay benefits to Plaintiff, Plaintiff has been damaged in an amount
22 equal to the amount of benefits to which Plaintiff was entitled, and should have been provided,
23 under the terms of the Plan and Policy.

24 50. As a direct and proximate result of the aforesaid conduct of Defendants in failing to
25 provide coverage and benefits due to Plaintiff, Plaintiff has suffered, and will continue to suffer in
26 the future, damages under the Plan, plus interest and other economic and consequential damages,
27 for a total amount to be determined at time of trial.

28

1 51. Accordingly, Plaintiff seeks reimbursement and compensation for any and all
2 benefits she would have received but for Defendants' failure to provide coverage, in an amount
3 presently unknown but to be set forth at the time of trial. Plaintiff is further entitled to
4 declaratory relief that she is entitled to Plan benefits, an order enjoining Defendants from denying
5 such benefits, and an order that Plaintiff shall recover all such benefits, together with interest
6 thereon and reasonable attorneys' fees incurred in seeking recovery of such benefits.

7
8 **SECOND CAUSE OF ACTION: FOR BREACH OF FIDUCIARY DUTY**
9 **AGAINST ALL DEFENDANTS**

10 52. Plaintiff refers to and incorporates herein by reference each and every allegation set
11 forth above in paragraphs 1 through 51, inclusive, as though set forth in full herein.

12 53. At all material times herein, Defendants were fiduciaries of Plaintiff and Mr.
13 Ciberay, both of whom were Plan beneficiaries.

14 54. As fiduciaries, Defendants had a duty of loyalty, honesty, and care to Plaintiff and
15 Mr. Ciberay.

16 55. Defendants breached their fiduciary duty to Plaintiff and Mr. Ciberay by, among
17 other things, including an exclusion in the Policy which is unlawful and unenforceable under
18 applicable California law, and which constitutes misinformation supplied by the fiduciary.

19 56. Defendants further breached their fiduciary duty to Plaintiff and Mr. Ciberay by,
20 among other things, relying solely on the above-described exclusion to wrongfully, arbitrarily, and
21 capriciously deny Plaintiff benefits due under the Policy.

22 57. Accordingly, Plaintiff seeks reimbursement and compensation for any and all
23 benefits she would have received but for Defendants' breach of their fiduciary duties, in an
24 amount presently unknown but to be set forth at the time of trial. Plaintiff is entitled to
25 declaratory relief that she is entitled to Plan benefits, an order enjoining Defendants from denying
26 such benefits, and an order that Plaintiff shall recover all such benefits, together with interest
27 thereon and reasonable attorneys' fees incurred in seeking recovery of such benefits.

THIRD CAUSE OF ACTION: FOR AN AWARD OF ATTORNEYS' FEES AND COSTS
PURSUANT TO 29 U.S.C. § 1132(G)(1): AGAINST ALL DEFENDANTS

58. Plaintiff refers to and incorporates herein by reference each and every allegation set forth above in paragraphs 1 through 57, inclusive, as though set forth in full herein.

59. 29 U.S.C. § 1132(g)(1) authorizes this Court to award reasonable attorneys' fees and costs of action to either party in an ERISA action.

60. As a result of the acts and omissions of the Defendants, Plaintiff has been required to retain the services of legal counsel and has necessarily incurred attorneys' fees and costs in prosecuting this action. Further, Plaintiff anticipates incurring additional attorneys' fees and costs in hereafter pursuing this case, all in a final amount which is currently unknown. Plaintiff therefore requests an award of reasonable attorneys' fees and costs.

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as follows:

1. For a declaration regarding the Defendants' noncompliance with minimum requirements of ERISA and other federal and state laws in connection with the denial of benefits;

2. For declaratory and injunctive relief as prayed herein, finding that Plaintiff is entitled to all life insurance benefits yet unpaid under the terms of the Plan, and that Defendants be ordered to pay all such benefits according to the terms of the Plan forthwith;

3. For an award of prejudgment interest on such unpaid benefits;

4. For reasonable attorney's fees pursuant to 29 U.S.C. § 1132(g)(1);

5. For costs of suit incurred herein; and

6. For such other and further relief as this Court may deem just and proper.

Dated: May 30, 2012

Respectfully Submitted,

By: s/ Richard A. Huver
Richard A. Huver and
George de la Flor, Esq.
Attorneys for Plaintiff Pamela Ciberay